IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 3:07-CR-373-N
	§	
CLAYTON TUMEY	§	

PLEA AGREEMENT

Clayton Tumey, the defendant, John Nicholson, the defendant's attorney, and the United States of America (the government), agree as follows:

1. **Rights of the defendant**: Tumey understands that he has the right

   a. to plead not guilty;

   b. to have a trial by jury;

   c. to have his guilt proven beyond a reasonable doubt;

   d. to confront and cross-examine witnesses and to call witnesses in his defense;

   e. against compelled self-incrimination; and

   f. to be represented by counsel at all stages of these proceedings.

2. **Waiver of rights and plea of guilty**: Tumey waives these rights (with the exception of his right to counsel) and pleads guilty to the offenses alleged in Counts One and Two of the Indictment. Tumey understands that Counts One and Two charge him with a violation of 18 U.S.C. § 2113(a), that is, Bank Robbery. Tumey understands the nature and elements of the crimes to which he is pleading guilty, and agrees that the factual resume he has signed is true and will be submitted as evidence.

3. The maximum penalties the Court can impose in Counts One and Two include:

a. imprisonment for a period not to exceed 20 years on each count;

b. a fine not to exceed $250,000.00 on each count, or twice the pecuniary gain to defendant or loss to the victim on each count;

c. a mandatory term of supervised release of at least two (2) years but not more than three (3) years must follow any term of imprisonment. If Tumey violates the conditions of supervised release, he could be imprisoned for the entire term of supervised release;

d. a mandatory special assessment of $100.00 on each count;

e. restitution to victims or to the community on each count, which may be mandatory under the law, and which Tumey agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and

f. costs of incarceration and supervision.

4. **Court's sentencing discretion and role of the Guidelines**: Tumey understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. Tumey has reviewed the guidelines with his attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. Tumey will not be allowed to withdraw his plea if his sentence is higher than expected. Tumey fully understands that the actual sentence imposed, so long as it is within the statutory maximum, is solely in the discretion of the Court.

5. **Court's discretion**: Tumey understands that this plea agreement does not create a right to be sentenced within, or below, any particular guideline range, and fully

understands that determination of the guideline range, as well as the actual sentence imposed are solely in the discretion of the Court.

6. **Mandatory special assessment**: Tumey agrees to pay to the U.S. District Clerk the amount of $200.00, in satisfaction of the mandatory special assessment in this case.

7. **Defendant's cooperation**: Tumey shall cooperate with the government by giving truthful and complete information and/or testimony concerning his participation in the offense of conviction. Upon demand, Tumey shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding his capacity to satisfy any fines or restitution. The government will advise the Court of the extent of Tumey's cooperation.

8. **Government's agreement**: The government will not bring any additional charges against Tumey based upon the conduct underlying and related to Tumey's plea of guilty and to the additional bank robbery offense that occurred in Allen, Texas, in the Eastern District of Texas on or about December 13, 2006, as outlined in the factual summary. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and the Eastern District of Texas (for the December 13, 2006, bank robbery). This agreement does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Tumey or any property.

9. **Violation of agreement**: Tumey understands that if he violates any provision of this agreement, or if his guilty plea is vacated or withdrawn, the government

will be free from any obligations of the agreement and free to prosecute Tumey for all offenses of which it has knowledge. In such event, Tumey waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, Tumey also waives objection to the use against him of any information or statements he has provided to the government, and any resulting leads, except information and leads provided under the protection of a proffer agreement or that was obtained as a result of a violation of his constitutional rights.

10. **Voluntary plea**: This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

11. **Waiver of right to appeal or otherwise challenge sentence**: Tumey waives his rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from his conviction and sentence. He further waives his right to contest his conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255, on any ground. Tumey, however, reserves the rights to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, (ii) an upward departure from the guideline range deemed applicable by the district court, (iii) an arithmetic error at sentencing, (iv) the voluntariness of his plea of guilty or this waiver and (v) claims of ineffective assistance of counsel.

12. **Representation of counsel**: Tumey has thoroughly reviewed all legal and factual aspects of this case with his lawyer and is fully satisfied with that lawyer's legal

representation. Tumey has received from his lawyer explanations satisfactory to him concerning each paragraph of this plea agreement, each of his rights affected by this agreement, and the alternatives available to him other than entering into this agreement. Because he concedes that he is guilty, and after conferring with his lawyer, Tumey has concluded that it is in his best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

13. **Restitution:** Tumey agrees to pay restitution not only to the banks as indicted in Counts One and Two, but also to the Chase Bank located at 908 W. McDermott Drive, Allen, Texas, in the Eastern District of Texas.

[NOTHING FURTHER ON THIS PAGE]

14. **Entirety of agreement**: This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

AGREED TO AND SIGNED this 26th day of June, 2008.

RICHARD B. ROPER
UNITED STATES ATTORNEY

CLAYTON TUMEY
Defendant

JOHN KULL 6/19/08
Assistant United States Attorney
Texas State Bar No. 00791057
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Tel: 214.659.8738
Fax: 214.659.8803

JOHN NICHOLSON
Attorney for Defendant

JERRI SIMS
Deputy Criminal Chief

I have read (or had read to me) this Plea Agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.

CLAYTON TUMEY

06/26/08
Date

I am the defendant's counsel. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge and belief, my client's decision to enter into this Plea Agreement is an informed and voluntary one.

JOHN NICHOLSON
Attorney for Defendant

6-26-08
Date